

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

v.

VANNESA GONSALVES, as Guardian of
the Person and Estate of PAULO J.
DeSOUSA, an Incompetent Person; and
TAMMIE CLEMENTS,

Defendants.

C.A. No. 1:17-cv-390

COMPLAINT FOR DECLARATORY JUDGMENT TO RESCIND FORECLOSURE

INTRODUCTION

Plaintiff, Federal National Mortgage Association (“Fannie Mae”), brings this Complaint for Declaratory Judgment pursuant to the federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, against Defendants, Vannesa Gonsalves, as Guardian of the Person and Estate of Paulo J. DeSousa, and Tammie Clements. Fannie Mae seeks an order from this Court setting aside the August 1, 2016 foreclosure sale of the real property located at 125 Frederick Street, East Providence, Rhode Island 02916 (the “Property”), and rescinding the foreclosure deed executed September 6, 2016 and recorded in the Land Evidence Records for the City of East Providence on September 15, 2016 at Book 3822, Page 62.

PARTIES

1. Plaintiff, Federal National Mortgage Association, is a corporation organized under the laws of the United States.

2. On information and belief, Defendant, Vannesa Gonsalves ("Gonsalves"), is Guardian of the Person and Estate of Paulo J. DeSousa, and she is a resident of the State of Rhode Island, currently residing at 4 Shamrock Drive, Warwick, Rhode Island 02886.

3. On information and belief, Defendant, Tammie Clements ("Clements"), is a resident of the State of Rhode Island and currently resides at the Property.

4. The borrower and resident ward, Paulo J. DeSousa ("DeSousa"), is a resident of the State of Rhode Island and is adjudged by the Probate Court of the City of East Providence to be mentally incompetent.

JURISDICTION AND VENUE

5. This Court has original jurisdiction over this action in accordance with 28 U.S.C. § 1332 because the parties to this suit are diverse and the mortgage loan debt and the value of the property in controversy exceed \$75,000, exclusive of interest and costs.

6. Fannie Mae's claim for declaratory judgment is appropriate in this District pursuant to 28 U.S.C. § 1391(b) as the Defendants, the Property and the events at issue that result in foreclosure are located and/or occurred in this district.

7. The subject property is located at 125 Frederick Street, East Providence, Rhode Island.

FACTUAL ALLEGATIONS

8. Fannie Mae adopts and restates the allegations in Paragraphs 1 through 7 of its Complaint.

9. On May 15, 2007, David R. Horta and Laurel A. Horta conveyed the Property to DeSousa via Warranty Deed recorded in the Land Evidence Records for the City of East Providence at Book 2835, Page 112. (Warranty Deed, *Exhibit A*.)

10. On November 13, 2007, DeSousa executed a promissory note (the "Note") through which he promised to repay Sovereign Bank ("Sovereign") a loan with principal sum \$243,000.00 with interest, as provided in the Note. (Note, *Exhibit B*.)

11. To secure his repayment obligations in the Note with Sovereign, DeSousa mortgaged, granted and conveyed to Sovereign, with Mortgage Covenants, the Property, by mortgage agreement dated November 13, 2007, and recorded in the Land Evidence Records for the City of East Providence on November 19, 2007 at Book 2908, Page 148 (the "Mortgage"). (Mortgage, *Exhibit C*.)

12. The Mortgage expressly provides at Paragraph 13 that "[t]he covenants and agreements of the Security Instrument shall bind . . . and benefit the successors and assigns of [Sovereign]. (*Id.* at ¶ 13.)

13. Following execution of the Mortgage, DeSousa conveyed the Property to himself and Tammie Clements, as joint tenants, with quitclaim covenants, via Quitclaim Deed, on November 19, 2007, and recorded in the Land Evidence Records for the City of East Providence on December 6, 2007 at Book 2915, Page 118. (Quitclaim Deed, *Exhibit D*.)

14. On or about September 1, 2014, DeSousa failed to make his monthly principal and interest payments as required under the terms and conditions of the Note, which resulted in a default on the Mortgage.

15. As required by the terms and conditions of the Mortgage, Fannie Mae provided notice to DeSousa of his default and advised him of his opportunity to cure the default by correspondence dated December 2, 2014.

16. On November 30, 2015, Santander Bank, N.A., formerly known as Sovereign Bank, assigned its interest in the Mortgage to Fannie Mae via an Assignment of Mortgage

recorded in the Land Evidence Records for the City of East Providence on December 11, 2015 at Book 3732, Page 231. (Assignment, *Exhibit E.*) Santander remained the mortgage loan servicer for the Mortgage on behalf of Fannie Mae.

17. Prior to the Assignment to Fannie Mae, on November 24, 2015, Gonsalves filed a Petition for Limited Guardianship or Guardianship (the "Petition") in the Probate Court of the City of East Providence seeking her appointment as guardian of the person and estate of DeSousa.

18. A hearing on the Petition was held on December 29, 2015 before the Probate Court of the City of East Providence. Thereafter, the Probate Court of the City of East Providence adjudged DeSousa to be incompetent and appointed Gonsalves as guardian of the person and estate of DeSousa, effective upon the payment of a \$10,000.00 bond on January 7, 2016. (Guardianship Order, *Exhibit F.*) The Guardian is currently responsible for DeSousa's obligations with respect to the Mortgage and Note. (Report of Guardian Ad Litem, *Exhibit G.*)

19. On or about June 11, 2016, Harmon Law Offices, P.C. ("Harmon"), as counsel to Santander, as loan servicer, sent a letters to DeSousa and to Gonsalves, as Guardian, notifying them of the foreclosure sale scheduled on August 1, 2016 at 1:00 p.m. A copy of the Mortgagee's Sale notice was recorded in the Land Evidence Records for the City of East Providence on June 10, 2016 at Book 3790, Page 232. (Foreclosure Notice, *Exhibit H.*) Notice of the sale was also published, as required, in the Providence Journal on July 11, 2016, July 18, 2016, and July 25, 2016.

20. On August 1, 2016, the Property was sold at foreclosure sale to "Fannie Mae a/k/a Federal National Mortgage Association" for \$216,400.00, with said sale memorialized, and title conveyed, through a Foreclosure Deed executed on September 6, 2016 and recorded in the Land

Evidence Records for the City of East Providence on September 15, 2016 at Book 3822, Page 62. (Foreclosure Deed, *Exhibit I*.)

21. As of the date of commencement of this action, DeSousa, either personally, or vis-à-vis his Guardian, has failed to cure his default on the Note and his breach of the terms of the Mortgage.

COUNT I - DECLARATORY JUDGMENT
FOR RESCISSION OF FORECLOSURE

22. Fannie Mae adopts and restates the allegations in Paragraphs 1 through 21 of its Complaint.

23. Fannie Mae is the current holder of the Mortgage by virtue of an assignment from Santander to Fannie Mae executed on November 30, 2015.

24. The Property was sold at foreclosure auction to Fannie Mae on August 1, 2016 and conveyed to Fannie Mae via a Foreclosure Deed executed on October 20, 2016.

25. Pursuant to 28 U.S.C. § 2201(a), this Court is conferred with the power to declare the rights and other legal relations of any party and the ability to issue declaratory relief to rescind the foreclosure as a matter of equity.

26. Fannie Mae now seeks a declaration from this Court pursuant to 28 U.S.C. § 2201(a) setting aside the August 1, 2016 foreclosure sale and rescinding the Foreclosure Deed recorded in the Land Evidence Records for the City of East Providence on September 15, 2016 at Book 3822, Page 62.

WHEREFORE, Federal National Mortgage Association respectfully requests that this Court declare the August 1, 2016 foreclosure sale set aside and the Foreclosure Deed rescinded as well as any other relief that may be deemed just and equitable.

Respectively submitted,

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

By Its Attorneys,

/s/ Samuel C. Bodurtha

Samuel C. Bodurtha, Bar No. 7075

Ethan Z. Tieger, Bar No. 9308

HINSHAW & CULBERTSON LLP

321 South Main Street

Suite 301

Providence, RI 02903

Telephone: (401) 751-0842

Facsimile: (401) 751-0072

sbodurtha@hinshawlaw.com

etieger@hinshawlaw.com

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